

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

Jonathan Berall, M.D., M.P.H.

Plaintiff,

v.

Verathon Inc., Pentax of America, Inc., Karl  
Storz Endoscopy-America, Inc., Aircraft  
Medical, Ltd., LMA North America, Inc.,  
and AirTraQ LLC.

Defendants.

Civ. No. 10-CV-5777 (BSJ)

**PLAINTIFF'S ANSWER TO DEFENDANT  
KARL STORZ ENDOSCOPY-  
AMERICA, INC.'S COUNTERCLAIMS**

**JURY TRIAL DEMANDED**

Without admitting the relevance of any of the allegations, Plaintiff Jonathan Berall, M.D., M.P.H. ("Dr. Berall") hereby answers Defendant Karl Storz Endoscopy-America, Inc.'s ("Storz") counterclaims as follows:

Dr. Berall denies each and every allegation contained in the counterclaims that is not expressly admitted below. Any factual allegation admitted below is admitted only to the specific admitted facts, not as to purported conclusions, characterizations, implications, or speculations that may arguably follow from the admitted facts. Dr. Berall denies that Storz is entitled to the relief requested, or any other relief.

1. Paragraph 1 states legal conclusions to which no response is necessary.

Nevertheless, Dr. Berall denies the assertions.

2. Admits paragraph 2 of Storz's counterclaims.
3. Admits paragraph 3 of Storz's counterclaims.

4. Paragraph 4 states legal conclusions to which no response is necessary.

Nevertheless, Dr. Berall admits the assertions.

5. Paragraph 5 states legal conclusions to which no response is necessary.

Nevertheless, Dr. Berall admits the assertions.

6. Paragraph 6 states legal conclusions to which no response is necessary.

Nevertheless, Dr. Berall admits the assertions.

7. Admits paragraph 7 of Storz's counterclaims.

8. Admits paragraph 8 of Storz's counterclaims.

9. Denies paragraph 9 of Storz's counterclaims. Dr. Berall claims infringement of the '178 Patent based on Storz's making, using, offering to sell, importing and/or selling within the United States, and/or actively inducing others to make, use, offer to sell, import, and/or sell within the United States, products that practice the inventions of the '178 Patent, including, for example, the C-Mac video laryngoscope.

10. Denies paragraph 10 of Storz's counterclaims insofar as it alleges that Storz's C-Mac video laryngoscope does not infringe any claim of the '178 Patent, or that the '178 Patent is invalid and/or unenforceable.

11. Admits paragraph 11 of Storz's counterclaims.

**First Counterclaim – Declaration of Non-Infringement of the '178 Patent**

12. Dr. Berall incorporates by reference his responses to paragraphs 1-11 as though fully set forth herein.

13. Denies paragraph 13 of Storz's counterclaims.

14. Denies paragraph 14 of Storz's counterclaims.

**Second Counterclaim – Declaration of Invalidity of the ‘178 Patent**

15. Dr. Berall incorporates by reference his responses to paragraphs 1-14 as though fully set forth herein.

16. Denies paragraph 16 of Storz’s counterclaims.

**DEFENSES**

17. Dr. Berall pleads the following defenses in response to Storz’s allegations, undertaking the burden of proof only as to those defenses deemed affirmative defenses by law, regardless of how such defenses are denominated herein. In addition to the defenses described below, Dr. Berall specifically reserves all rights to allege additional defenses, including (without limitation) those that may be established during the course of discovery:

18. Storz fails to state a counterclaim upon which relief can be granted.

**PRAYER FOR RELIEF ON COUNTERCLAIMS**

WHEREFORE, Dr. Berall demands judgment against Storz dismissing each of the counterclaims in its entirety, denying Storz the relief it has requested, and granting to Dr. Berall all of the relief demanded in the Complaint.

Dated: November 24, 2010

PEARL COHEN ZEDEK LATZER, LLP

By: /s/ David A. Loewenstein  
David A. Loewenstein (DL-5054)  
Douglas Gilbert (DG - 3726)  
[DavidL@pczlaw.com](mailto:DavidL@pczlaw.com)  
[DouglasG@pczlaw.com](mailto:DouglasG@pczlaw.com)  
1500 Broadway, 12<sup>th</sup> Floor

New York, NY 10036  
Tel: (646)878-0800  
Fax: (646)878-0801

Attorneys for Plaintiff Jonathan Berall  
M.D., M.P.H.

**CERTIFICATE OF SERVICE**

I hereby certify that I caused a copy of the foregoing PLAINTIFF'S ANSWER TO DEFENDANT KARL STORZ ENDOSCOPY-AMERICA, INC.'S COUNTERCLAIMS to be served upon counsel of record by filing the document on the court's ECF system on November 24, 2010.

/s/ Keren Livneh

Keren Livneh